



**The Comptroller General
of the United States**

Washington, D.C. 20548

Ayer

Decision

Matter of: GE Government Services

File: B-235101

Date: August 11, 1989

DIGEST

1. New and independent grounds of protest, concerning agency's conduct of cost realism analysis and acceptance of an allegedly late best and final offer, first raised in protester's post-conference comments are dismissed as untimely when filed more than 10 working days after protester knew the bases of protest.
2. Protest that awardee's proposal failed to address the cost of required material items is denied where awardee offered a proposal which agency reasonably concluded met requirements questioned by protester and the agency reasonably subjected the questioned aspects of the awardee's proposal to cost realism analysis and upward adjustment during evaluation.

DECISION

GE Government Services protests the Department of the Navy's award of a cost-plus-fixed-fee, level-of-effort contract to Bendix Field Engineering Corporation under request for proposals (RFP) No. N00421-88-R-0143, for electronic visual systems support services. GE, the incumbent contractor, contends that the Bendix proposal did not include all items required by the RFP.

We dismiss the protest in part and deny it in part.

The Navy issued the RFP on May 13, 1988, with a June 30 closing date, for a base year and four 1-year options. The RFP called for award to the technically acceptable offeror proposing the lowest evaluated cost. Option period prices were included in the evaluation.

The RFP listed six evaluation criteria: technical approach, management plan, corporate experience, personnel qualifications, facilities and equipment, and cost factors including

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cost realism. The RFP stated that all six criteria, including cost, had to be favorably evaluated for an offer to be acceptable. Since the solicitation essentially provided for a pass/fail approach for technical acceptability, the RFP warned offerors that cost would be the determinative evaluation factor among technically acceptable proposals, and should not be ignored.

The RFP specified both labor categories and required levels of effort that proposals had to satisfy to be considered technically acceptable. With regard to cost realism, offerors were advised that costs would be evaluated for realism and that costs might be evaluated "for realism in view of congruence with the technical approach proposed." To facilitate the cost realism analysis, the RFP required offerors to submit cost realism data including: direct labor rates by category, any burden on labor, escalation on labor, other direct costs, all indirect burdens or costs, facilities capital cost of money factors, and compensation plans for professional employees. Offerors also had to provide information on facilities/equipment available to support the contract (showing at least 10,000 square feet of space), and their capability for expansion (demonstrating an ability after the base year to expand by 50 percent, if the government exercises its options). Finally, as amended, the RFP notified offerors that a 5.5 percent overtime premium cost, which included the direct labor associated with overtime, had to be included in the proposals as a part of the level of effort and that it would apply to the full value of the contract including the fee.

On June 30, the Navy received initial proposals from GE and Bendix. Both proposals were found technically unacceptable. The Navy allowed each offeror to review the agency's evaluation of its own proposal, to meet with agency personnel, and to submit a revised proposal by October 11. GE's revised offer proposed a cost of \$17,497,022, while Bendix proposed a cost of \$13,837,539. The agency completed its review of the revised technical proposals on November 8, and determined that both were technically acceptable. On November 21, the Defense Contract Audit Agency (DCAA) verified the acceptability of both offerors' rates. On December 22, the agency concluded its review of the cost proposals by accepting GE's \$17,497,022 cost proposal (with minor adjustments for mathematical errors) and by upwardly adjusting the Bendix cost proposal to \$15,302,507, to normalize Bendix's estimate of required direct productive manhours.

During the second week of February 1989, the agency conducted cost negotiations with both offerors. By letter

dated February 9, Bendix was advised that it should frame its cost best and final offer (BAFO) in direct productive manhours consistent with the RFP requirement since the agency would upwardly adjust any other presentation to conform to the required direct productive manhours. The letter also advised that BAFOs were due by February 24.

GE delivered its cost BAFO on the due date despite a heavy snowstorm that closed the Navy facilities on February 24. Bendix also attempted to make delivery on February 24, but because of the base closure was unable to locate a person authorized to accept its BAFO. The Navy accepted Bendix's BAFO the following business day.

After a second round of cost evaluations, including a cost realism analysis and further upward adjustment of Bendix's proposed cost, the agency rated both proposals technically acceptable.

As a result of its cost realism analysis, the Navy increased Bendix's proposed cost from \$13,500,412 to \$15,407,659. The agency's adjustments to Bendix's BAFO included increases to the Bendix labor rates; recalculation of the 5.5 percent overtime premium; and upward adjustment of the Bendix overhead rate to allow for the possibility that Bendix may have to lease other facilities in the option years. On March 30, the Navy awarded the contract to Bendix.

The protester initially raised three objections to the award, contending that the Bendix proposal did not address: (1) required facility costs; (2) 5.5 percent overtime allowance costs; and (3) the requirements for certain amounts and types of labor hours. GE assumed that the agency was unaware of the alleged deviations, insisting that a proper evaluation of the Bendix proposal would have disclosed Bendix's deviations to the agency. GE contended that the agency's award to Bendix without consideration of the alleged deviations amounted to a waiver of material RFP cost requirements. Finally, GE urged that once the Navy was aware of the deviations, it should have afforded GE an opportunity to submit an amended proposal based on the same deviations before awarding the contract to Bendix. As discussed below, we are not persuaded by GE's arguments.

As a preliminary matter, we must consider the timeliness of the following additional contentions which the protester first asserted in its June 2 post-conference comments: (1) the agency improperly used cost realism adjustments to cure the awardee's "unrealistic proposal" which, instead, should have been judged technically unacceptable; (2) the agency may not have completed its cost realism analysis of

the Bendix proposal before award; (3) the agency may have failed to make a corresponding adjustment to the awardee's overhead costs when it upwardly adjusted the awardee's productive manhours to the required 2,080 labor hours per year of direct labor; (4) the agency's analysis of the awardee's labor costs should have been based on firm employment commitments stating specific salaries instead of on the awardee's average rates; (5) the agency improperly allowed the awardee to use a logistician's labor rate lower than the rate the agency allowed the protester to use; (6) the agency improperly relied on DCAA's speculation as to why the awardee's BAFO contained significantly lower labor rates than its initial proposal; and (7) the agency improperly afforded the awardee an additional day to submit its BAFO without notice to the protester.

Each new protest ground must independently satisfy the timeliness requirements of our Bid Protest Regulations, which do not contemplate the piecemeal presentation or development of protest issues. See Consolidated Devices, Inc., B-232651, Dec. 20, 1988, 88-2 CPD ¶ 606. As a general rule, the timeliness of specific bases of protest raised after the filing of a timely initial general protest depends upon the relationship the later-raised bases bear to the initial protest. Where the later bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements. Conversely, where the later contentions merely provide additional support for an earlier timely-raised objection, we consider these additional arguments. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD ¶ 412, aff'd, July 11, 1978, 78-2 CPD ¶ 28. However, the fact that an initial protest includes a general allegation of impropriety provides no support for the timeliness of more specific allegations. See Illinois Bell Telephone Co., B-202238, Oct. 20, 1981, 81-2 CPD ¶ 320.

GE argues that because it timely raised two issues--(1) the failure of Bendix's proposal to include all items required by the RFP, and (2) the agency's improper acceptance of a proposal that was "not cost realistic because it did not include costs of certain material requirements"--its other contentions are timely because they are encompassed within its original protest. We disagree.

GE's initial protest states that "the Navy improperly evaluated Bendix's proposal because Bendix's proposal did not include all items required by the RFP." GE identifies three specific areas where Bendix's proposal allegedly failed to conform to RFP requirements: (1) failure to include the cost of a fully furnished facility; (2) failure

to include the cost of the 5.5 percent overtime allowance; and (3) noncompliance "with the RFP requirements for certain amounts and type of labor hours." The crux of the protest is that Bendix submitted a nonconforming proposal in these three areas. We do not agree that including such a broadly stated allegation in an initial protest permits the protester to later present any specific, and otherwise untimely, argument having some relevance to that initial general allegation. The seven later-raised contentions do not concern Bendix's failure to address the three specific cost areas named in the initial protest; rather, they concern the agency's action, alleging shortcomings in the agency's conduct of its cost realism analysis and the improper acceptance of a late BAFO. We note that the seven contentions are sufficiently distinct from the original allegations addressed by the agency report that the report provided little help in resolving the issues raised.

Our Regulations require that protests not based on solicitation improprieties be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1988). Here, GE first raised the seven additional contentions in its June 2 post-conference comments, which also show that the issues were evident to the protester from the agency report. Consequently, the issues are untimely raised since the Navy has advised that the protester received its copy of the agency report disclosing the issues on May 12, and the matters were not raised until June 2, more than 10 working days later.

With regard to the issues raised in the initial protest, we disagree with GE's position that the agency's cost evaluation of the awardee's proposal was improper because it resulted in the acceptance of an offer that failed to address required facility costs or overtime allowance costs, and did not comply with requirements for certain amounts and types of labor hours.

When an agency evaluates proposals for the award of a cost reimbursement contract, the offerors' proposed estimated costs of contract performance are not considered as controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation § 15.605(d); Bendix Field Engineering Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Consequently, an agency's evaluation of estimated costs properly should consider the extent to which the offerors' proposed costs represent what the contract should cost, assuming reasonable economy and

efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. Great weight is placed on the contracting agency's exercise of informed judgment during cost evaluations, since the agency is in the best position to assess "realism" of costs and technical approaches and must bear the consequences of defective cost analyses. We limit our review of these matters to determining whether an agency's cost evaluation was reasonably based and not arbitrary. Pan Am World Services, Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

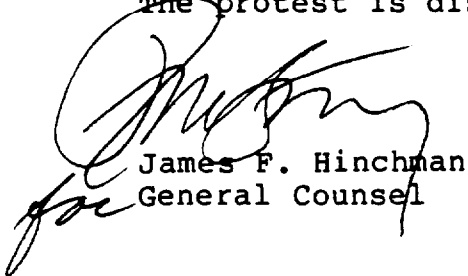
Here, GE first alleges that Bendix's proposal did not include the cost of a fully furnished facility. Bendix proposed the use of an on-site facility which it currently occupies. The record shows that the proposed facility may only be available to Bendix during the base year due to the exercise of a government-held option to buy the same facility. The contracting officer learned of this possible transfer of ownership after the closing date for BAFOs. The contracting officer took the information into consideration in the cost analysis by evaluating the costs associated with the awardee's proposed use of its current facility, and the cost of an alternate off-site facility meeting solicitation requirements. The evaluation included a market survey to determine the rates charged for acceptable off-site space, as well as consideration of a previously acquired quotation for a similar off-site facility. An upward adjustment was made to the awardee's option year overhead to compensate for costs associated with an off-site facility. We see no basis for objection to the evaluation and agree with the agency's position that the question of whether the awardee has the capability to find another facility after performance begins is a matter of responsibility which we will not review except under circumstances not applicable here. See 4 C.F.R. § 21.3(m)(5); Communication Service Co., Inc., B-233188, Nov. 8, 1988, 88-2 CPD ¶ 461.

GE also alleges that Bendix did not address the cost of the 5.5 percent overtime allowance. The record shows that Bendix did address the 5.5 percent overtime allowance by including it in each line item. This approach to the calculation was not what the agency had anticipated and this aspect of Bendix's cost was not readily comparable to the GE's cost proposal. The contracting officer normalized Bendix's entry of the overtime allowance by "zeroing-out" the allowance from each line item and recalculating the allowance based on total estimated cost. Normalization is a technique sometimes used within the cost adjustment process in an attempt to arrive at a greater degree of cost realism. It involves the measurement of offerors against the same cost standard or baseline in circumstances where there is no

logical basis for differences in approach, or in situations where insufficient information is provided with the proposals, leading to the establishment of common "should have bid" estimates by the agency. See Sabreliner Corp., B-221857, Apr. 29, 1986, 86-1 CPD ¶ 414. Here, we have examined the agency's "zeroing-out" calculations in camera, and find no support for either GE's allegation that Bendix's proposal was deficient, or that the Navy's evaluation was lacking in this regard.

Finally, GE asserts that Bendix's proposal did not comply with the requirements for certain amounts and types of labor hours. The Navy denies this, and has supplied a copy of Bendix's cost BAFO which shows that Bendix proposed the Service Contract Act labor categories and hours required by the RFP. We have examined this document, which covers the types and amounts of labor required by the RFP, and again find no support for GE's contention in this regard.

The protest is dismissed in part and denied in part.



James F. Hinchman
General Counsel